

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 6
HON. WARREN R. DARROW
CASE NO. P1300CR20081339

JEANNE HICKS, CLERK
By: Lilly Miller, Deputy Clerk
DATE: August 4, 2010

FILED
DATE: August 4, 2010
9:28 O'Clock A.M.
JEANNE HICKS, CLERK
BY: Lilly Miller
Deputy

TITLE:

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

COUNSEL:

Yavapai County Attorney
Joseph Butner / Jeffrey Paupore
(For Plaintiff)

John Sears
and
Larry Hammond / Anne Chapman
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, AZ 85012
(For Defendant)

HEARING ON: NATURE OF PROCEEDINGS
SEALED HEARING / Status Conference

COURT REPORTER
Tom Ritter

START TIME: 10:05 a.m.

APPEARANCES: Joseph Butner, Co-Counsel for the State
Jeffrey Paupore, Co-Counsel for the State
Steven DeMocker, Defendant (in custody)
John Sears, Co-Counsel for Defendant
Larry Hammond, Co-Counsel for Defendant
Anne Chapman, Co-Counsel for Defendant
John Napper, Counsel for Renee Girard, witness

At 10:05 a.m., Court convenes the Status Conference with Counsel Butner, Counsel Paupore, the Defendant, Counsel Sears, Counsel Hammond, Counsel Chapman, Counsel Napper, Michael Sechez, Investigator for State, Rich Robertson, Defense Investigator, Charlotte DeMocker, and Katherine DeMocker present. The Court notes that this hearing is sealed. Counsel Hammond requests that Mr. Sechez be precluded from this hearing. Counsel Butner asks that Mr. Sechez be permitted to stay for the hearing. The Court directs Mr. Sechez to leave the Courtroom. At 10:08 a.m., Mr. Sechez exits the Courtroom.

The Court discusses case law relating to the issue of the criminal investigation of the defense attorneys. Counsel Butner advises the Court that the criminal investigation is being held in abeyance at this time, until the end of the trial; [REDACTED]. Counsel Butner reiterates that the criminal investigation will not be conducted by a Yavapai County agency.

The Court discusses its concerns with the delays in this matter and the Defendant's right to a speedy trial. The Court discusses the case law further and how the Court is inclined to handle the matter.

Counsel Butner advises the Court of what the State is alleging in terms of the [REDACTED]

August 4, 2010

Page 2

the handling of the life insurance policy proceeds. The Court discusses the hearing on July 14th, in which this issue was previously addressed. Counsel Hammond disagrees with Counsel Butner's statements regarding the State's allegations and sets forth his position on the issue. Counsel Hammond again moves for a dismissal with prejudice. Counsel Butner presents reply and clarifies that the State does not oppose the defense attorneys staying on in this trial.

The Court discusses what it is obligated to do in a case where there is a claim of this type of conflict of interest. The Court may need to address the Defendant directly, on the record. Counsel Butner agrees. The Court stands at recess.

~~~~~ Recess 11:00 a.m. ~~~~~

At 11:10 a.m., Court reconvenes with all Parties and Counsel previously announced. Counsel Napper addresses the Court regarding his Client's grant of immunity and asks that the immunity extend to the allegations made by the State regarding the life insurance proceeds and her role in relation to that. Counsel Butner and Counsel Hammond agree that the immunity should extend to the issue of the life insurance proceeds. Counsel Napper will prepare a form of order for the Court. Counsel Napper further discusses the letter that his Client wrote to the DeMocker family, which was subsequently disclosed to the Parties against her wishes. Counsel Napper asks that the Court order that the letter not be disclosed to anyone outside of these proceedings and that Pastor Dan Spencer return or destroy the copy of the letter in his possession. The Court discloses that it is familiar with Mr. Spencer. Counsel Butner indicates that the State has no opposition to Counsel Napper's request to order Mr. Spencer to destroy the letter. Counsel Sears discusses his concerns about Mr. Spencer's involvement in this case and asks that the Court also enter a gag order with respect to Mr. Spencer and the contents of the letter.

The Court **ORDERS** that any hard copy of the Girard letter be returned to Counsel Napper and that any electronic copy of it be destroyed. The Court further enters a limited gag order with respect to Mr. Spencer and **ORDERS** that he is not to discuss the contents of the Girard letter with anyone.

Counsel Sears is also concerned about how the newspaper learned about the letter. Counsel Butner reports that the State has not been talking to the newspaper about this case. The Court reminds all present of the requirements of the Rule of Exclusion of Witnesses.

At 11:22 a.m., Counsel Napper exits the Courtroom.

The Court clarifies its position regarding conducting *ex-parte* proceedings of a legal and ethical nature. The Court further discusses the issue of the criminal investigation of the defense team and whether or not the defense attorneys are able to continue in this trial. The Court believes that the situation gives rise to an un-waivable conflict of interest. Counsel Butner would like an opportunity to research the issue of the conflict so that he can provide authority to the Court. Counsel Hammond discusses supporting case law on the issue and notes that he does not believe that this situation gives rise to an un-waivable conflict. Counsel Hammond again asks that the Court hold a hearing on the issue, some of which may need to be *ex-parte*.

Counsel Hammond requests more specific information regarding [REDACTED] and he would like verification as to whether or not the criminal investigation is suspended. Counsel Hammond

August 4, 2010

Page 3

further requests an avowal in writing from Sheila Polk that this investigation will not be held by a Yavapai County agency.

Counsel Chapman advises the Court that the defense received a CD last night from the State as ordered, but a supplemental report by Mr. Schmidt is missing. Counsel Butner discusses what documents were disclosed to the defense and indicates that a copy of the supplemental report will be provided. Counsel Chapman believes that there are other documents related to the investigation that have not been disclosed to the defense. Counsel Butner advises that Sheila Polk has conferred with Mr. Musgrove and other probate attorneys regarding the handling of the trust [REDACTED]

To the extent that this Court now needs to do its own investigation, the Court directs the State to submit affidavits from the probate lawyers that were consulted and to send copies of the same to the defense.

Counsel Butner will give the defense a copy of the supplemental report prepared by Mr. Schmidt today. Counsel Chapman notes that the defense has also not received any reports regarding the four interviews of Renee Girard or any other documentation about the investigation.

The Court directs the State to provide the defense with any documents which pertain to the basis for the State's allegation of wrongdoing on the part of the defense team by the end of today.

Counsel Butner asks for additional time to supply the probate information, as Sheila Polk is out of the office today.

The Court discusses its concerns about the importance of the disclosure of that information and notes that it does not see any basis for the State's allegations or that the situation rises to substantiating a criminal offense. The Court had previously remarked that the situation was an ancillary issue or civil matter and had advised that the matter should be pursued only after the conclusion of the trial. The Court needs to know exactly what information the State has to suggest any criminal wrongdoing.

Counsel Butner again asks for more time to supply the probate information, at least by the end of the week. Counsel Butner further discusses when he believes the criminal investigation of the defense attorneys was suspended. Counsel Hammond further sets forth the defense team's position [REDACTED]

[REDACTED] The defense may be asking the Court to declare a mistrial with prejudice, to release the Defendant from custody, and to remove the State as the prosecutor in this case. Counsel Butner addresses the Court regarding the State's obligation [REDACTED]  
[REDACTED]  
[REDACTED]

Counsel Butner suggests that an evidentiary hearing be set on this issue so that the matter can be addressed more fully, preferable at the beginning of next week. At that hearing, Counsel Butner would present evidence in support of the State's motion for determination of counsel.

Counsel Sears discusses the Court's previous ruling on the issue, the criminal investigation, [REDACTED]  
[REDACTED] Counsel Sears would like written assurance from the State that the criminal investigation is suspended and will not be handled by a Yavapai County agency [REDACTED]

August 4, 2010

Page 4

[REDACTED]. Counsel Sears does not see the benefit of holding an evidentiary hearing on the matter as suggested by the State and discusses his concerns regarding the repeated delays in this trial. Counsel Butner objects to Counsel Sears' demands for written avowals, [REDACTED]  
[REDACTED]  
[REDACTED]

Counsel Hammond reminds the Court that the defense team had previously indicated that they would not be able to continue with this trial should these ethical accusations resurface. Counsel Butner discusses the issue further and clarifies that the State would like to proceed with the trial.

Counsel Sears presents argument in support of instructing the jury regarding the issue of the life insurance using the Defendant's proposed instructions. Counsel Sears asks that the Court take control of the evidence regarding the life insurance information and limit the State's ability to argue any criminal misconduct in relation to the handling of the insurance proceeds. Further discussion ensues regarding the issue of the life insurance proceeds, the State's allegation that the Defendant had dominion and control over the life insurance money, and what information regarding the life insurance proceeds should be permitted to come into the trial.

The Court will accept briefing on the issues discussed today, to be provided by Friday, August 6, 2010.

Counsel Hammond asks that the Court order the State to produce the information requested earlier, [REDACTED]

[REDACTED] Counsel Butner advises that the State [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] will be under seal and not disclosed to anyone. The Court reminds the Parties that everything pertaining to this hearing is under seal.

Counsel Chapman asks for an extension of time to file the reply to the motion to dismiss. **DENIED.**

**END TIME: 9:28 a.m.**

**THEREAFTER, OFF THE RECORD:**

The Court directs Counsel Napper to prepare and lodge a form of order concerning Mr. Spencer and his handling of the letter written by Ms. Girard. Counsel Napper is further directed to send copies of the same to all other Parties in this matter.

cc: Division 6  
County Attorney  
John Sears  
Osborn Maledon, P.A.  
Victim Services  
Dean Trebesch (Contract Administrator, PD)  
Christopher DuPont, Trautman DuPont PLC, 1726 North Seventh St., Phoenix, AZ 85006, Counsel for Victims  
Charlotte and Katherine DeMocker  
John Napper – Counsel for Renee Girard, witness